

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

RICHARD SCOTT BLACKSTONE,

Plaintiff,

v.

Civil Action No: 1:13-22762

MR. MASTERS,  
Warden, et al.

Defendants.

**MEMORANDUM OPINION AND ORDER**

Pending before the court is plaintiff's motion to dismiss his petition for a writ of habeas corpus to allow him to file a tort claim. (Doc. No. 13). By Standing Order, this matter was referred to United States Magistrate Judge Cheryl A. Eifert for submission of findings and recommendations regarding disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). (Doc. No. 2). On October 9, 2013, the matter was transferred to United States Magistrate Judge R. Clarke VanDervort. (Doc. No. 9). Due to the retirement of Magistrate Judge VanDervort, the case was referred to United States Magistrate Judge Omar J. Aboulhosn for findings of fact and recommendations for disposition. (Doc. No. 17). Magistrate Judge Aboulhosn submitted to the court his Proposed Findings and Recommendation on January 11, 2016, in which he construed plaintiff's motion to dismiss his habeas action as a motion for voluntary dismissal, recommended that the

district court grant this motion, dismiss plaintiff's petition for a writ of habeas corpus without prejudice, and refer the matter back to the Magistrate Judge for further proceedings on plaintiff's Bivens claim. (Doc. No. 20 at 4-5).

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to the Magistrate Judge's Findings and Recommendation. The failure to file such objections constitutes a waiver of the right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

Plaintiff failed to file any objections to the Magistrate Judge's Findings and Recommendation within the seventeen-day period. Having reviewed the Findings and Recommendation, the court adopts the findings and recommendation contained therein.

The court hereby **ADOPTS** the factual and legal analysis contained within the PF&R, **GRANTS** plaintiff's motion for voluntary dismissal, (Doc. No. 13), **DISMISSES** plaintiff's petition for a writ of habeas corpus without prejudice, (Doc. No. 1), and **REFERS** this case back to Magistrate Judge Aboulhosn for further proceedings on plaintiff's Bivens claim.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to counsel of record and plaintiff, pro se.

It is **SO ORDERED** this 18th day of February, 2016.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge